

REMARKS

Claims 1-37 and 39-45 are in the application, with Claims 1, 11-13, 17-21, 23, 35, 41 and 43 having been amended, and with Claim 38 having been cancelled. Claims 1, 11-13, 17-21, 23, 35, 41 and 43 are the independent claims herein. No new matter has been added. Reconsideration and further examination are respectfully requested.

Claim Rejections – 35 USC § 101

Claims 1-10, 12-16, 18, 23-37 and 39-45 are rejected on the ground that the invention claimed therein is allegedly directed to non-statutory subject matter.

To overcome these rejections, each independent claim rejected under § 101 (namely claims 1, 12, 13, 18, 23, 35, 41 and 43) has been amended to recite receiving indications and/or matching needed and available computing capacity at a server computer. Accordingly, it is believed that all of the pending claims now clearly recite statutory subject matter.

Claim Rejections – 35 USC § 103(a)

Claims 1-37 and 39-45 are rejected as being unpatentable over Chou et al. (U.S. Patent No. 6,055,504, hereafter “Chou”).

It is noted that each of the independent claims has now been amended to recite in substance the limitations of former claim 38. That is, each independent claim now recites, in effect, receiving indications of needed and available operating systems. In particular, claim 1 is directed to a “method of providing a marketplace for computing capacity in a computer network”. The method recited in claim 1 includes “receiving at a server computer an indication of needed computing capacity, including a bid amount, for a first computer in the computer network, said indication including requirements for specific types of operating systems compatible with the application program needed to be run on the first computer”. The method further includes “receiving at said server computer an indication of available computing capacity, including an ask amount, for a second computer in the computer network, said indication of available computing capacity indicating available types of operating systems at said second computer”. Also recited in claim 1 are “matching at said server computer the first

computer's need for computing capacity, including the bid amount, with the second computer's available computing capacity, including the ask amount" and "enabling the second computer to provide at least a portion of said available computing capacity to the first computer in response to said matching step".

Since the substance of former claim 38 is now incorporated in claim 1, the Examiner's discussion of former claim 38 is particularly relevant. In explaining the rejection of former claim 38, the Examiner asserted that operating systems

are operating parameters in computing capacity which play similar technical operating roles in computing as operating parameters such as bandwidth, network end-points and type of communication networks play in the telecommunications operations of Chou [citing column 1, lines 1-5 of the reference].

Applicants respectfully traverse this statement by the Examiner. Operating systems are qualitatively different from, and much more complex than, communication network parameters such as bandwidth, endpoints or types of network. Neither are operating systems in any way analogous to these communication network parameters. Applicants assume, for the sake of argument, that one of ordinary skill in the art would find it obvious to apply Chou's teaching regarding a communication capacity market to exchanging excess computer capacity. Even so, there is nothing in the teachings of Chou, as to parameters or otherwise, that would lead one of ordinary skill to recognize that operating systems are a parameter to be specified by buyers and sellers of computer capacity. Accordingly, it is believed that nothing in the Chou reference renders it obvious to receive at a server computer indications of required or available operating systems to facilitate exchange of excess computer capacity.

It is therefore respectfully submitted that the rejection of claim 1 should be reconsidered and withdrawn. Such is also the case with respect to all of the other pending claims, which also in effect recite indicating operating systems as a needed or available parameter of computer capacity to be bought or sold.

C O N C L U S I O N

Accordingly, Applicants respectfully request allowance of the pending claims. If any issues remain, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is kindly invited to contact the undersigned via telephone at (203) 972-3460.

Respectfully submitted,



June 21, 2005

Date

Nathaniel Levin
Registration No. 34,860
Buckley, Maschoff & Talwalkar LLC
Attorneys for IBM Corporation
Five Elm Street
New Canaan, CT 06840
(203) 972-3460